

1 KENDALL BRILL & KLIEGER LLP
Robert N. Klieger (192962)
2 *rklieger@kbfirm.com*
Randall L. Jackson (244545)
3 *rjackson@kbfirm.com*
10100 Santa Monica Blvd., Suite 1725
4 Los Angeles, California 90067
Telephone: 310.556.2700
5 Facsimile: 310.556.2705

6 Attorneys for Defendant
Electronic Arts Inc.
7
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 RON G. VOSS,

13 Plaintiff,

14 v.

15 JERRY E. KNOTTS; ELECTRONIC ARTS
INC d/b/a EA SPORTS; THE PROCTER &
16 GAMBLE MANUFACTURING CO. d/b/a
GILLETTE; VIACOM INC.; VIACOM
17 INTERNATIONAL INC.; and DOES 1-25,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. 11-CV-0842 H (Wmc)

**ANSWER OF DEFENDANT
ELECTRONIC ARTS INC. TO FIRST
AMENDED COMPLAINT**

Hon. Marilyn L. Huff

ANSWER TO FIRST AMENDED COMPLAINT

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendant Electronic Arts Inc. (“EA”) hereby answers the First Amended Complaint (“Complaint”) of Ron G. Voss (“Plaintiff”). EA denies all factual allegations set forth in the Complaint unless expressly admitted. Any admission herein is limited to the express language of the response, and shall not be deemed an implied admission of additional facts. EA need not admit or deny legal conclusions or arguments; however, EA affirmatively denies that it has violated any applicable federal or state law and asserts that Plaintiff should be denied all of the relief it requests. To the extent paragraphs in the Complaint are grouped under headings, EA responds generally that such headings and groupings are conclusions of law or fact and denies each and every such allegation made or implied by such headings or groupings.

1. EA denies the allegations in the first paragraph identified as paragraph 1 in the Complaint.

1. The allegations contained in the second paragraph identified as paragraph 1 in the Complaint consist of legal conclusions as to which no response is required.

2. EA admits that this Court has jurisdiction over this action.

2. EA admits that venue in this judicial district is proper.¹

3. EA lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 3, and on this basis denies those allegations.

4. EA lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 4, and on this basis denies those allegations.

5. EA admits that it is a Delaware corporation with its principal place of business in Redwood Shores, California; that EA SPORTS is a label of EA; and that EA’s titles include Tiger Woods PGA TOUR 10, FIFA Soccer 10, Madden NFL 10, NHL 10, and EA SPORTS Fight Night Round 4. EA denies the remaining allegations in paragraph 5.

¹ EA notes, for purposes of avoiding confusion, that the Complaint contains two paragraphs identified as paragraph 1 and two paragraphs identified as paragraph 2. EA’s responses to these paragraphs correspond with the order in which these paragraphs appear in the Complaint.

1 6. EA lacks knowledge or information sufficient to form a belief as to the truth or
2 accuracy of the allegations in paragraph 6, and on this basis denies those allegations.

3 7. EA denies that the program infringes Plaintiff's purported copyright. EA lacks
4 knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining
5 allegations in paragraph 7, and on this basis denies those allegations.

6 8. EA denies the allegations in paragraph 8.

7 9. EA denies the allegations in paragraph 9.

8 10. EA lacks knowledge or information sufficient to form a belief as to the truth or
9 accuracy of the allegations in paragraph 10, and on this basis denies those allegations.

10 11. EA lacks knowledge or information sufficient to form a belief as to the truth or
11 accuracy of the allegations in paragraph 11, and on this basis denies those allegations.

12 12. EA lacks knowledge or information sufficient to form a belief as to the truth or
13 accuracy of the allegations in paragraph 12, and on this basis denies those allegations.

14 13. EA lacks knowledge or information sufficient to form a belief as to the truth or
15 accuracy of the allegations in paragraph 13, and on this basis denies those allegations.

16 14. EA lacks knowledge or information sufficient to form a belief as to the truth or
17 accuracy of the allegations in the first sentence of paragraph 14, and on this basis denies those
18 allegations. EA denies the allegations in the second, third, and fourth sentences of paragraph 14.
19 EA states that the fifth sentence of paragraph 14 consists of characterizations of and quotations
20 from a press release issued by EA on approximately November 17, 2009 in connection with the
21 program (the "Press Release"), and that the Press Release is the best evidence of its contents. EA
22 denies the allegations in the sixth sentence of paragraph 14. EA lacks knowledge or information
23 sufficient to form a belief as to the truth or accuracy of the allegations in the seventh sentence of
24 paragraph 14, and on this basis denies those allegations. EA denies the allegations in the eighth
25 sentence of paragraph 14.

26 15. EA admits that viewers may have watched the program on the Spike Channel. EA
27 lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the
28 remaining allegations in paragraph 15, and on this basis denies those allegations.

1 16. EA lacks knowledge or information sufficient to form a belief as to the truth or
2 accuracy of the allegations in the first sentence of paragraph 16, and on this basis denies those
3 allegations. EA states that the remaining allegations in paragraph 16 consist of characterizations
4 of and quotations from the Press Release, and that the Press Release is the best evidence of its
5 contents.

6 17. EA admits that attorneys representing Plaintiff sent correspondence to EA, more
7 than two years before this lawsuit was filed, in which Plaintiff alleged that EA had violated his
8 purported rights in the Work. EA otherwise denies the allegations in paragraph 17.

9 18. EA denies the allegations in paragraph 18.

10 **Answer To First Claim for Relief**

11 **(for Direct Copyright Infringement)**

12 **(Against Defendants Knotts and Viacom)**

13 19. Answering paragraph 19, EA incorporates by reference the admissions and denials
14 contained in paragraphs 1 through 18 as if fully set forth herein.

15 20. EA denies the allegations in paragraph 20.

16 21. EA denies the allegations in paragraph 21.

17 22. EA denies that defendants have copied, displayed, or distributed infringing copies
18 of Plaintiff's purported work, and on that basis denies the allegations in paragraph 22.

19 23. EA denies the allegations in paragraph 23.

20 24. EA denies the allegations in paragraph 24.

21 25. EA denies the allegations in paragraph 25.

22 26. EA denies the allegations in paragraph 26.

23 27. EA denies the allegations in paragraph 27.

24 28. EA denies the allegations in paragraph 28.

25 29. EA denies the allegations in paragraph 29.

26 30. EA denies the allegations in paragraph 30.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Answer To Second Claim for Relief
(for Direct Copyright Infringement (Preparation of Derivative Works))
(Against Defendants Knotts and Viacom)

31. Answering paragraph 31, EA incorporates by reference the admissions and denials contained in paragraphs 1 through 30 as if fully set forth herein.
32. EA denies the allegations in paragraph 32.
33. EA denies the allegations in paragraph 33.
34. EA denies the allegations in paragraph 34.
35. EA denies the allegations in paragraph 35.
36. EA denies the allegations in paragraph 36.
37. EA denies the allegations in paragraph 37.

Answer To Third Claim for Relief
(for Direct Copyright Infringement (Distribution))
(Against Defendant Viacom)

38. Answering paragraph 38, EA incorporates by reference the admissions and denials contained in paragraphs 1 through 37 as if fully set forth herein.
39. EA denies the allegations in paragraph 39.
40. EA denies the allegations in paragraph 40.
41. EA denies the allegations in paragraph 41.
42. EA denies the allegations in paragraph 42.
43. EA denies the allegations in paragraph 43.
44. EA denies the allegations in paragraph 44.

Answer To Fourth Claim for Relief
(for Inducement of Copyright Infringement)
(Against Defendants Knotts, P&G, and EA)

45. Answering paragraph 45, EA incorporates by reference the admissions and denials contained in paragraphs 1 through 44 as if fully set forth herein.

1 46. EA admits that it has promoted the program, but otherwise denies the allegations in
2 paragraph 46.

3 47. EA denies the allegations in paragraph 47.

4 48. EA denies the allegations in paragraph 48.

5 49. EA denies the allegations in paragraph 49.

6 50. EA denies the allegations in paragraph 50.

7 51. EA denies the allegations in paragraph 51.

8 52. EA denies the allegations in paragraph 52.

9 **Answer To Fifth Claim for Relief**

10 **(for Contributory Copyright Infringement)**

11 **(Against Defendants Knotts, P&G and EA)**

12 53. Answering paragraph 53, EA incorporates by reference the admissions and denials
13 contained in paragraphs 1 through 52 as if fully set forth herein.

14 54. EA denies the allegations in paragraph 54.

15 55. EA denies the allegations in paragraph 55.

16 56. EA denies the allegations in paragraph 56.

17 57. EA denies the allegations in paragraph 57.

18 58. EA denies the allegations in paragraph 58.

19 59. EA denies the allegations in paragraph 59.

20 60. EA denies the allegations in paragraph 60.

21 61. EA denies the allegations in paragraph 61.

22 **Answer To Sixth Claim for Relief**

23 **(for Unfair Competition under California's UCL)**

24 **(Against Defendants Knotts and Viacom)**

25 62. Answering paragraph 62, EA incorporates by reference the admissions and denials
26 contained in paragraphs 1 through 61 as if fully set forth herein.

27 63. EA states that no response to paragraph 63 is required in light of the Court's order
28 dismissing Plaintiff's Sixth Claim for Relief from the Complaint.

1 64. EA states that no response to paragraph 64 is required in light of the Court's order
2 dismissing Plaintiff's Sixth Claim for Relief from the Complaint.

3 **Answer To Seventh Claim for Relief**

4 **(for Unfair Competition under the Common Law of California)**

5 **(Against Defendants Knotts and Viacom)**

6 65. Answering paragraph 65, EA incorporates by reference the admissions and denials
7 contained in paragraphs 1 through 64 as if fully set forth herein.

8 66. EA states that no response to paragraph 66 is required in light of the Court's order
9 dismissing Plaintiff's Seventh Claim for Relief from the Complaint.

10 67. EA states that no response to paragraph 67 is required in light of the Court's order
11 dismissing Plaintiff's Seventh Claim for Relief from the Complaint.

12 **Answer To Eighth Claim for Relief**

13 **(for Breach of Implied-in-Fact Contract)**

14 **(Against EA)**

15 68. Answering paragraph 68, EA incorporates by reference the admissions and denials
16 contained in paragraphs 1 through 67 as if fully set forth herein.

17 69. EA denies the allegations in paragraph 69.

18 70. EA denies the allegations in paragraph 70.

19 71. EA denies the allegations in paragraph 71.

20 72. EA denies the allegations in paragraph 72.

21 73. EA denies the existence of any agreement between EA and Plaintiff, and on that
22 basis denies the allegations in paragraph 73.

23 74. EA denies the allegations in paragraph 74.

24 75. EA denies the allegations in paragraph 75.

25 76. EA denies the allegations in paragraph 76.

26 77. EA denies the allegations in paragraph 77.

27 78. EA denies the allegations in paragraph 78.

1 79. EA admits that attorneys representing Plaintiff sent correspondence to EA, more
2 than two years before this lawsuit was filed, in which Plaintiff alleged that EA had violated his
3 purported rights in the Work. EA otherwise denies the allegations in paragraph 79.

4 80. EA denies the allegations in paragraph 80.

5 **Answer To Ninth Claim for Relief**

6 **(for Breach of Confidence)**

7 **(Against Knotts and EA)**

8 81. Answering paragraph 81, EA incorporates by reference the admissions and denials
9 contained in paragraphs 1 through 80 as if fully set forth herein.

10 82. EA denies the allegations in paragraph 82.

11 83. EA denies the allegations in paragraph 83.

12 84. EA denies the allegations in paragraph 84.

13 85. EA denies the allegations in paragraph 85.

14 **Answer To Tenth Claim for Relief**

15 **(for Imposition of Constructive Trust to Avoid Unjust Enrichment)**

16 **(Against All Defendants)**

17 86. Answering paragraph 86, EA incorporates by reference the admissions and denials
18 contained in paragraphs 1 through 85 as if fully set forth herein.

19 87. EA states that no response to paragraph 87 is required in light of the Court's order
20 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

21 88. EA states that no response to paragraph 88 is required in light of the Court's order
22 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

23 89. EA states that no response to paragraph 89 is required in light of the Court's order
24 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

25 90. EA states that no response to paragraph 90 is required in light of the Court's order
26 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

27 91. EA states that no response to paragraph 91 is required in light of the Court's order
28 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

1 92. EA states that no response to paragraph 92 is required in light of the Court's order
2 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

3 93. EA states that no response to paragraph 93 is required in light of the Court's order
4 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

5 94. EA states that no response to paragraph 94 is required in light of the Court's order
6 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

7 95. EA states that no response to paragraph 95 is required in light of the Court's order
8 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

9 96. EA states that no response to paragraph 96 is required in light of the Court's order
10 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

11 97. EA states that no response to paragraph 97 is required in light of the Court's order
12 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

13 98. EA states that no response to paragraph 98 is required in light of the Court's order
14 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

15 99. EA states that no response to paragraph 99 is required in light of the Court's order
16 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

17 100. EA states that no response to paragraph 100 is required in light of the Court's order
18 dismissing Plaintiff's Tenth Claim for Relief from the Complaint.

19 **Answer To Eleventh Claim for Relief**

20 **(for Quantum Meruit)**

21 **(Against EA)**

22 101. Answering paragraph 101, EA incorporates by reference the admissions and denials
23 contained in paragraphs 1 through 100 as if fully set forth herein.

24 102. EA denies the allegations in paragraph 102.

25 103. EA denies the allegations in paragraph 103.

26 104. EA denies the allegations in paragraph 104.

Answer To Plaintiff's Prayer For Relief

EA denies that Plaintiff is entitled to any of the relief requested.

AFFIRMATIVE DEFENSES

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, EA further pleads the following separate and additional defenses. By pleading these defenses, EA does not in any way agree or concede that it has the burden of proof or persuasion on any of these issues. EA reserves the right to assert such additional affirmative defenses as discovery indicates are proper.

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim Upon Which Relief May Be Granted)

Neither the Complaint, nor any purported claim for relief contained therein, alleges facts sufficient to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's Eighth, Ninth, and Eleventh Claims for Relief are barred by the statute of limitations because Plaintiff had actual notice of EA's allegedly wrongful conduct by no later than September 2008, more than two years before he commenced this action.

THIRD AFFIRMATIVE DEFENSE

(Laches)

Plaintiff's Fourth, Fifth, Eighth, Ninth, and Eleventh Claims for Relief are barred by the doctrine of laches because Plaintiff had actual notice of EA's allegedly wrongful conduct by no later than September 2008 and delayed unreasonably in asserting his purported claims for relief, which caused unfair prejudice to EA.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff's Fourth, Fifth, Eighth, Ninth, and Eleventh Claims for Relief are barred by the doctrine of estoppel because of the acts, omissions, and course of conduct of Plaintiff, upon which EA relied to its detriment.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff's Fourth, Fifth, Eighth, Ninth, and Eleventh Claims for Relief are barred by reason of Plaintiff's unclean hands with regard to the matters alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Privity)

Plaintiff's Eighth, Ninth, and Eleventh Claims for Relief are barred by the lack of privity between Plaintiff and EA.

SEVENTH AFFIRMATIVE DEFENSE

(Independent Creation)

Plaintiff's Fourth and Fifth Claims for Relief are barred because the program was created independently of Plaintiff's alleged work.

PRAYER FOR RELIEF

WHEREFORE, EA prays for relief as follows:

1. That the Complaint be dismissed, with prejudice and in its entirety;
2. That Plaintiff takes nothing by this action and that judgment be entered against Plaintiff and in favor of EA on the Complaint;
3. That EA be awarded its attorneys' fees incurred in defending this action;
4. That EA be awarded all costs incurred in defending this action; and
5. That EA be granted such other and further relief as the Court may deem just and proper.

Dated: November 2, 2011

KENDALL BRILL & KLIEGER LLP

By: /s/ Robert N. Klieger

Robert N. Klieger
Attorneys for Defendant
Electronic Arts Inc.

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 10100 Santa Monica Blvd., Suite 1725, Los Angeles, California 90067.

On November 2, 2011, I served the following documents described as follows:

ANSWER OF DEFENDANT ELECTRONIC ARTS INC. TO FIRST AMENDED COMPLAINT

on the interested parties in this action as follows:

Dan Lawton
LAWTON LAW FIRM
Emerald Plaza
402 W. Broadway, Suite 1860
San Diego, California 92101

Paul J. Loh
Nhan T. Vu
WILLENKEN WILSON LOH & LIEB LLP
707 Wilshire Blvd., Suite 3850
Los Angeles, California 90017

Louis C. Klein
JACKSON DEMARCO TIDUS PECKENPAUGH
2815 Townsgate Road, Suite 200
Westlake Village, California 91361

BY CM/ECF NOTICE OF ELECTRONIC FILING: I certify that the foregoing document is being filed electronically by using the CM/ECF system. As such, the document will be served electronically on all interested parties whose attorneys are registered CM/ECF users and have consented to electronic service.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 2, 2011, at Los Angeles, California.

/s/ Randall L. Jackson
Randall L. Jackson